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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/498,515	02/04/2000	Howard G. Page	1285	8911
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			EXAMINER	
			RETTA, YEHDEGA	
			ART UNIT	PAPER NUMBER
			3622	
			MAIL DATE	DELIVERY MODE
			08/20/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/498,515

Applicant(s)

PAGE ET AL.

Examiner

Yehdega Retta

Art Unit

3622

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
b) ☐ They raise the issue of new matter (see NOTE below);
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Yehdega Retta/
Primary Examiner, Art Unit 3622

Continuation of 11, does NOT place the application in condition for allowance because: Regarding the clause "wherein the insertion point comprises data indicating where in the selected video advertising is to be inserted", applicant asserts that in the context of this application, the plain meaning of "insertion point" is the point in the playback of the video content data at which something is to be inserted. Applicant further asserts that since the video content is in the form of a data stream, any insertion point which references a point within the data stream at which something is to be inserted would also have to exist in the form of data. Applicant further asserts that since the insertion point can be transported separately from the video content, it cannot be an element of the video content and must be a reference to a location within the video content, therefore, the insertion point must be inherently comprise data.

Based on applicant's assertion that the "insertion point" is the point in the video content data at which something is to be inserted, than the insertion point comprises of data indicating where in the selected video content the selected video advertising to be inserted equates to the insertion point (the point) itself includes data indicating that the advertising is inserted at the insertion point. Based on the understanding that the "insertion point" and "data indicating where to insert the advertising" is considered to means the same the rejection of 112 2nd is withdrawn.

Applicant also argues that the limitation "transferring the insertion point to the target viewer device over the second transport system" is not discussed or identified within Swix, Zigmond, or combination of Swix and Zigmond. Applicant further argues that the limitation is not obvious and Swix and Zigmond specifically teach away from "transporting the insertion point to the target viewer device over the second transport system" and neither discloses use of a lower bandwidth transportation system.

Examiner would like to point out that Swix teaches the broadcasting server delivers the continuous broadcast program in one channel and delivers other programs and advertisement in other channel (col. 12 line 61 to col. 13 line 9). It was decided by the BPAI that the channel used for the continuous broadcast program would be a higher bandwidth than the channel used for other programs and advertisements (see BPAI decision, decided on 11/6/07). Since the data used to indicate the insertion point is not a continuous broadcast program, it would have been obvious to one of ordinary skill in the art at the time of the invention to know that the data (i.e. insertion point) would be delivered in the lower bandwidth, same as the "other programs" and "advertisements" of Swix are delivered.

Examiner respectively disagrees with applicant that Swix and Zigmond teach away from the transporting the insertion point over the second transportation system.